

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition for Declaratory Ruling that)	WC Docket No. 03-45
Pulver.com's Free World Dialup is)	
Neither Telecommunications Nor)	
a Telecommunications Service)	
_____)	

**REPLY COMMENTS OF
THE UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTA), pursuant to the Public Notice released herein on February 14, 2003,¹ hereby files its reply comments. USTA filed comments herein on March 14, 2002. In those comments, USTA urged the Federal Communications Commission (FCC) to deny the Petition for Declaratory Ruling (Petition) of pulver.com (Petitioner) without prejudice to it being filed again at an appropriate future date. After reviewing the comments filed herein, USTA continues to believe that dismissing the Petition without prejudice is the most appropriate FCC action.

DISCUSSION

In its comments, Cisco Systems, Inc., (Cisco) offers support for the Petition.² Cisco often cites to the FCC's 1998 *Report to Congress*³ as justification and authority for granting the relief

¹ Public Notice, WC Docket No. 03-45, DA 03-439 (rel. Feb. 14, 2003).

² See Comments of Cisco Systems, Inc., WC Docket No. 03-45, filed March 14, 2003.

³ *Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd 11501 (1998) (*Report to Congress*).

requested in the Petition.⁴ Cisco's reliance on the 1998 *Report to Congress* as determinative of the classification issues presented by the Petition is misplaced. As USTA observed in its comments, "it must be recognized that the analysis performed by the FCC [in the *Report to Congress*] was conducted five years ago."⁵ "Further, the classification conclusions offered by the FCC with respect to VoIP in the *Report to Congress* were tentative even then."⁶ USTA continues to believe that the FCC must "update the record to incorporate changes in technology that have occurred over the past five years; revisit its tentative conclusions in the *Report to Congress* and issue final, reviewable conclusions; address how it will ensure the continuation of specific, predictable and sufficient universal service support mechanisms in light of its final conclusions; and complete pending rulemaking proceedings concerning the appropriate regulatory classification for services and facilities used to provide broadband access to the Internet" before it addresses the merits of the Petition.⁷

The Voice on the Net Coalition (VON Coalition) also "supports any classification of Free World Dialup as neither telecommunications nor a telecommunications service."⁸ As justification for its position, the VON Coalition offers that "VON remains a nascent industry."⁹ "Premature intervention risks stifling the innovation and competition that are hallmarks of nascent industries, and is at odds with the statutory mandate of Section 230(b) to preserve the 'vibrant and competitive free market' for the Internet."¹⁰ USTA disagrees.

⁴ Cisco Comments at 2-5.

⁵ USTA Comments at 4.

⁶ *Id.*

⁷ *Id.* at 4-5.

⁸ Comments of the VON Coalition, WC Docket No. 03-45, filed March 14, 2003, at 1.

⁹ *Id.* at 3.

¹⁰ *Id.*

First, it should be noted that Section 230 of the Communications Act¹¹ provides for the protection of private blocking and screening of offensive material transmitted over the Internet. While it does reference certain policies of the United States concerning the Internet, the context for the stated policies is wholly unrelated to the issues raised by the Petition. Further, determining the appropriate classification for Free World Dialup does not, by itself, violate any of the national policies set forth in Section 230(b). The first task for the FCC should it ever address the merits of the Petition is to identify the essential characteristics of Free World Dialup and determine its regulatory classification. Once it has determined the appropriate classification, the FCC can then decide what, if any, regulatory dispensation is merited based on other applicable provisions in the Communications Act or policy reasons that are within the jurisdiction of the FCC to consider. Whether Free World Dialup is a nascent service or a mature service, correctly identifying its regulatory classification at the appropriate time is necessary. It is, though, premature at this point to do so, and the FCC should dismiss the Petition without prejudice.

In its comments, Global Crossing North America (Global Crossing) concludes that the Petition should be granted.¹² Global Crossing then goes on to present substantive arguments concerning the merits of the *Petition for Declaratory Ruling That AT&T's Phone-to-Phone IP Telephony Services Are Exempt from Access Charges*, WC Docket No. 02-361.¹³ Issues related to AT&T's petition are best addressed in that proceeding. The AT&T petition is relevant here only to the extent that it illustrates the many variations of voice over Internet protocol (VoIP)

¹¹ 47 U.S.C. § 230.

¹² Comments of Global Crossing, WC Docket No. 03-45, filed March 14, 2003, at 2.

¹³ *Id.* at 2-3.

service that exist and why great care, and a fully developed factual record, are required before the FCC acts to determine the regulatory classification of Free World Dialup.

Finally, the comments filed by BellSouth Corporation (BellSouth), SBC Communications, Inc., (SBC) and Verizon identify important facts concerning Free World Dialup.¹⁴ It appears that the description of Free World Dialup found in the Petition may soon change. Such changes could significantly affect any decision concerning the regulatory classification of Free World Dialup.

Although the Petition represents that a subscription to Free World Dialup is free,¹⁵ BellSouth notes that “petitioner has stated publicly its intention to charge for the service in the future.”¹⁶ SBC points out that a recent press release quoting Jeff Pulver “indicates that FWD service will become an ENUM registrar, which will enable callers from outside the FWD community to call FWD members.”¹⁷ In its comments, Verizon indicates that petitioner has made an announcement suggesting that in the future Free World Dialup “might expand to permit communications with non-broadband customers.”¹⁸ It appears that the essential characteristics of Free World Dialup are not fixed at this time. If true, there is little to be gained by the FCC attempting to determine the regulatory classification of Free World Dialup now since any decision may be rendered moot by the next iteration of the service.

¹⁴ See Comments of BellSouth; Opposition of SBC Communications, Inc.; and Comments of Verizon, WC Docket No. 03-45, filed March 14, 2003.

¹⁵ Petition at 3.

¹⁶ BellSouth Comments at 4.

¹⁷ SBC Comments at 2.

CONCLUSION

On the basis of its previously filed comments and these reply comments, USTA asks that the FCC deny the Petition without prejudice.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION



By: _____

Lawrence E. Sarjeant
Michael T. McMenamin
Robin Tuttle

Its Attorneys

1401 H Street, NW, Suite 600
Washington, D.C. 20005
(202) 326-7300

April 2, 2003

¹⁸ Verizon Comments at 2.

CERTIFICATE OF SERVICE

I hereby certify that a copy of USTA's Reply Comments in WC Docket No. 03-45 was served on this 2nd day of April 2003 by electronic delivery or first class, postage prepaid mail to the persons listed below.

By: /s/
Sharron V. Turner

SERVICE LIST

Marlene H. Dortch
Office of the Secretary
Federal Communications
Commission
445 12th Street, SW
Suite TW-A325
Washington, D.C. 20554

Janice M. Myles
Federal Communications
Commission
Wireline Competition Bureau
Competition Policy Division
445 12th Street, SW
Suite 5-C327
Washington, D.C. 20554

Mark H. Price
2509 Wake Drive
Raleigh, NC 27608

Theodore M. Weitz
VON Coalition, Inc.
1718 M Street, NW PMB #336
Washington, DC 20036

Theodore M. Weitz
Voice on the Net Coalition
c/o Bruce D. Jacobs
Shaw Pittman LLP
2300 N Street, N.W.
Washington, D.C. 20037-1128

Charles Sprickman
16 Roosevelt Place
Montclair, NJ 07042

Dana J. Puopolo
2134 Oak Street #C
Santa Monica, CA 90405

Michael J. Shortley, III
Global Crossing North America, Inc.
1080 Pittsford-Victor Road
Pittsford, NY 14534

Henry G. Hultquist
WorldCom, Inc.
1133 19th Street, N.W.
Washington, DC 20036

Jeffrey Brueggeman
SBC Telecommunications, Inc
1401 I Street, NW
Suite 400
Washington, DC 20005

Robert B. McKenna
Qwest Communications
International Inc
1020 19th Street, N.W. Suite 700
Washington, DC 20036

Scott Blake Harris
Harris, Wiltshire & Grannis,
LLP
1200 18th Street, NW, 12th floor
Washington, DC 20036
Counsel for Cisco Systems,
Inc.

Ramaswamy P. Aditya
2609 Ellsworth St Apt 102
Berkeley, CA 94704 -3216

Paul W. Jamieson
Piper Rudnick LLP
1200 19th Street, NW
Washington, DC 20036
Counsel for International
Softswitch
Consortium

Theodore R. Kingsley
BellSouth Corporation
675 West Peachtree Street, N. E.
Suite 4300
Atlanta, GA 30375 -0001

John M. Goodman
Verizon
1300 I Street, NW
Washington, DC 20005

Alexander Caskey
21616 W. Lost Lake Road
Snohomish, WA 98296 -7807

Jim U'Ren
7354 Rochester Road
Lockport, NY 14094

Eric S. Johansson
90 Stony Brook Road
Westford, MA 01886

Patrick W. Kelley
Office of the General Counsel
Federal Bureau of
Investigation
935 Pennsylvania Ave., NW
Washington, DC 20535

John R. LoGalbo
Computer Crime and
Intellectual Property Section
Criminal Division
United States Department of
Justice
Tenth and Constitution Avenue,
NW
John C. Keeney Building, Suite
600
Washington, DC 20530

Joel M. Margolis
The Federal Bureau of Investigation &
The Department of Justice
14800 Conference Center Drive
Suite 300
Chantilly, VA 20151 -3810

Gary Hallmark
P.O. Box 310455
New Braunfels, TX 78131

Jose R. Vazquez
9273 Collins Avenue
Surfside, FL 33154

Eric Hernaez
333 Newark Street
Building J
Hoboken, NJ 07030

D. Chiodo
P.O. Box 2938
Grand Rapids, MI 49501

Victor von Schlegell
13287 Bluff Road
Traverse City, MI 49686

John M. Stec
250 North Branch Road
Glenview, IL 60025

Don Russell
10487 Harvest View Way
San Diego, CA 92128-4193

Bakh Inamov
17 Emerson Street
Newton, MA 02458

Barak Pearlmutter
Department of Computer Science
University of New Mexico
Albuquerque, NM 87131

Leo Papadopoulos
IPC Information Systems
777 Commerce Drive
Fairfield, CT 06432-5500

Steven Ferguson
P.O. Box 1682
Dover, FL 33527-1682

Tom Kelsey
5750 Stockholm Place
Dulles, VA 20189-5750

Chris Hostetter
2320 Haste Avenue, #3
Berkeley, CA 94704-2215

Peter T. Hardie
923 Daylight Circle
Lawrenceville, GA 30045

Jeremiah Blatz
240 Mercer Street, apt. 1506
New York, NY 10012

Andrew Lankford
11800 Twinlakes Drive, #108
Beltsville, MD 20705

Ethan D. Mandel
940 Bonnie Brae
River Forest, IL 60305-1512

Micah Abresch
4932 West Campus Drive, #B3
Allendale, MI 49401

Alex Kirk
3122 9th Road, N#1
Arlington, VA 22201-2157

Susan M. Hafeli
Shaw Pittman
2300 N Street, NW
Washington, DC 20037-1128
Counsel for pulver.com

Qualex International
Portals II
445 Twelfth Street, SW
Room CY-B402
Washington, DC 20554